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No. 827

In the Supreme Court of the United States

OCTOBER TERM, 1946

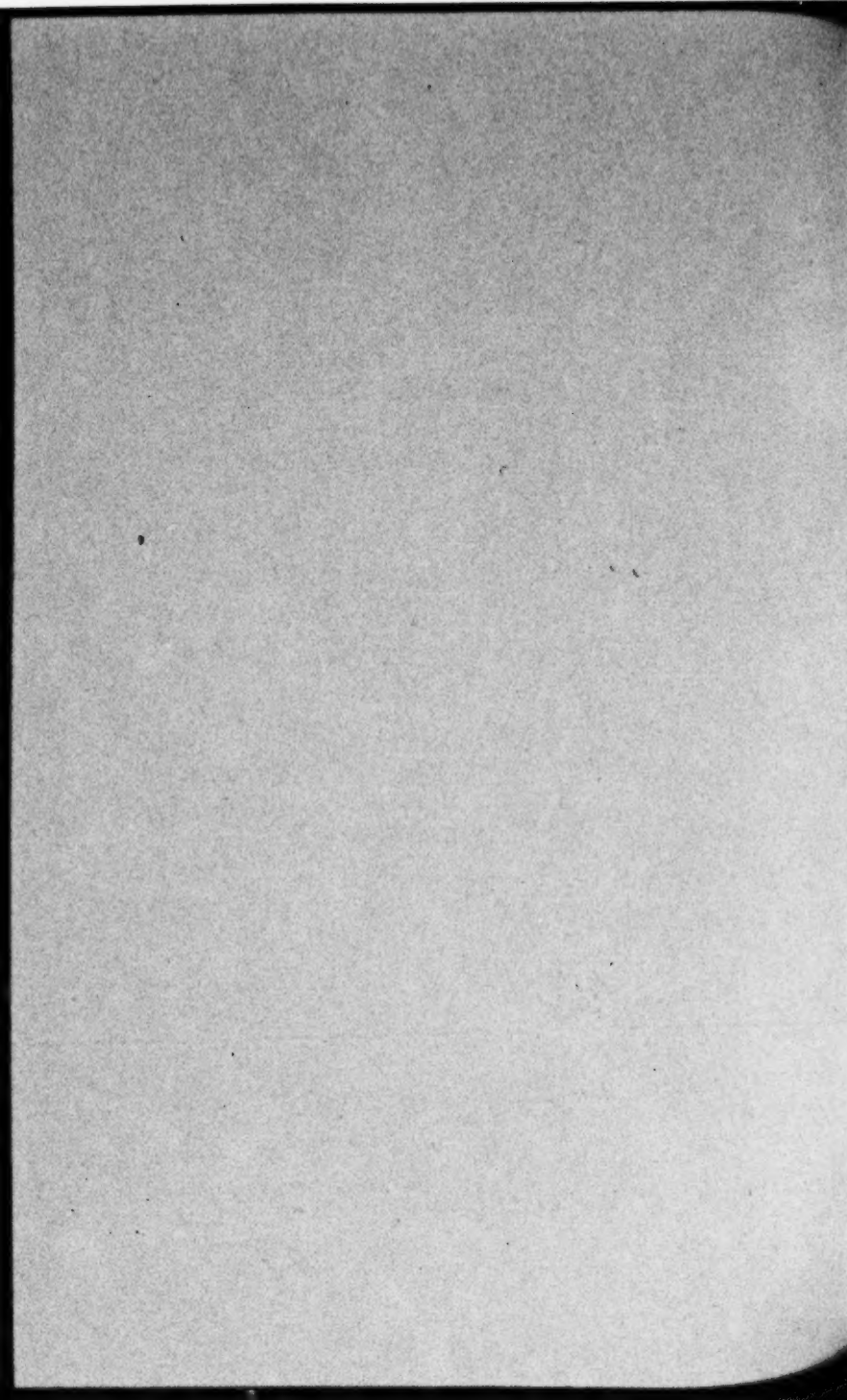
SOUTHERN PACIFIC COMPANY, PETITIONER

v.

THE UNITED STATES

**ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE COURT
OF CLAIMS**

BRIEF FOR THE UNITED STATES IN OPPOSITION



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OPINION BELOW

The opinion of the Court of Claims (R. 20-23) is reported at 67 F. Supp. 966.

JURISDICTION

The judgment of the Court of Claims was entered October 7, 1946 (R. 23). The petition for a writ of certiorari was filed December 30, 1946. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether lend-lease shipments of military goods moving on Government bills of lading for use

by the Chinese army constitute "military or naval property of the United States moving for military or naval and not for civil use", within Section 321 (a) of the Transportation Act of 1940, and hence are entitled to move at land grant rail rates.

STATUTES INVOLVED

The relevant portions of the Transportation Act of 1940, 54 Stat. 898, 49 U. S. C. 65 (a), and of the Lend-Lease Act, 55 Stat. 31, 22 U. S. C., Supp. V, 411-419, are set forth in the Appendix, pp. 6-10.

STATEMENT

The petitioner railroad instituted this proceeding in the Court of Claims to recover a land-grant deduction of \$61,314.04 taken by the United States on shipments of trucks to San Francisco in the autumn of 1941 (R. 14, 15, 16). The shipments involved had been moved by petitioner, in participation with other interstate rail carriers, on Government bills of lading and were consigned to China Defense Supplies, Inc., acting on behalf of the Republic of China (R. 14, 15, 20). Petitioner, as delivering carrier, had employed the full commercial rate in calculating the freight bills of \$140,730.44 which it presented to the United States (R. 15, 16). After taking land-grant deductions, the Government paid \$79,416.40 to petitioner.

The trucks here involved had been purchased and shipped by the United States under its Lend-Lease program (R. 17-18). The Presidential authorization for the purchase and shipment was based on an appropriate request by the Republic of China for the trucks and was accompanied by a finding that the shipments would be in the interest of national defense (R. 17-18).¹ The Court of Claims found that the trucks were of military design and type, and were intended both by the United States and the Republic of China for military use by the Chinese Army (R. 19-20).

The court below held that the shipments were "military or naval property of the United States moving for military or naval and not for civil use" within the meaning of Section 321 (a) of the Transportation Act of 1940 and that, accordingly, the land-grant deduction was properly taken by the United States (R. 21-23).

¹ Petitioner refers to these trucks as having been "procured" by the United States on a "requisition" by the Republic of China (Pet. 4). The trucks were purchased by the Quartermaster General, pursuant to directions by the Secretary of War to effectuate the President's authorization, from the Lend-Lease appropriation, and in furtherance of the purposes of the Lend-Lease Act (R. 18). The shipments here involved were the property of the United States (R. 20). The "requisition" by the Republic of China was the appropriate method of instituting Lend-Lease action, the "requisition" being presented to the United States by the Allied government seeking aid (R. 18-19).

ARGUMENT

Under Section 321 (a) of the Transportation Act of 1940, land-grant deductions are reserved to the United States on shipments of "military or naval property of the United States moving for military or naval and not for civil use." Petitioner would exclude all lend-lease shipments from the scope of the provision by restricting it to shipments of military or naval property for use by the armed forces of the United States. No exception from the rule thus urged is recognized by petitioner even where, as here, the shipments were comprised of trucks of military design and type, purchased and shipped by the United States for military use by the Chinese Army. This narrow construction was properly rejected by the court below, and no review of its decision is warranted. In *United States of America v. Powell*, and *United States of America v. Atlantic Coast Line Railroad Company*, Nos. 56 and 57, this Term, and *Northern Pacific Railway Company v. United States of America*, No. 400, this Term, decided March 3, 1947, this Court expressly recognized that the reduced rates established by Section 321 (a) were intended to apply to Government military property moving for military use by "an ally rather than by this nation," and that military shipments under the Lend-Lease Act were entitled to land-grant tariffs.

CONCLUSION

The decision below was correct and squarely accords with this Court's recently expressed views. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

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MARCH 1947.

APPENDIX

Section 321 (a) of the Transportation Act of September 18, 1940, 54 Stat. 898, 49 U. S. C. 65 (a) provides, in part, as follows:

PART II—RATES ON GOVERNMENT TRAFFIC

Government To Pay Full Rates

SEC. 321. (a) Notwithstanding any other provision of law, but subject to the provisions of sections 1 (7) and 22 of the Interstate Commerce Act, as amended, the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, except that the foregoing provision shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use or to the transportation of members of the military or naval forces of the United States (or of property of such members) when such members are traveling on official duty; * * *

The Lend-Lease Act (Act of March 11, 1941), 55 Stat. 31, 22 U. S. C., Supp. V, 411-419, provides, in part, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "An Act to Promote the Defense of the United States".

SEC. 2. As used in this Act—

(a) The term “defense article” means—

(1) Any weapon, munition, aircraft, vessel, or boat;

(2) Any machinery, facility, tool material, or supply necessary for the manufacture, production, processing, repair, servicing, or operation of any article described in this subsection;

(3) Any component material or part of or equipment for any article described in this subsection;

(4) Any agricultural, industrial or other commodity or article for defense.

Such term “defense article” includes any article described in this subsection: Manufactured or procured pursuant to section 3, or to which the United States or any foreign government has or hereafter acquires title, possession, or control.

(b) The term “defense information” means any plan, specification, design, prototype, or information pertaining to any defense article.

SEC. 3. (a) Notwithstanding the provisions of any other law, the President may, from time to time, when he deems it in the interest of national defense, authorize the Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government—

(1) To manufacture in arsenals, factories, and shipyards under their jurisdiction, or otherwise procure, to the extent to which funds are made available therefor, or contracts are authorized from time to time by the Congress, or both, any defense article for the government of any country whose defense the President deems vital to the defense of the United States.

(2) To sell, transfer title to, exchange, lease, lend, or otherwise dispose of, to any such government any defense article, but no defense article not manufactured or procured under paragraph (1) shall in any way be disposed of under this paragraph, except after consultation with the Chief of Staff of the Army or the Chief of Naval Operations of the Navy, or both. The value of defense articles disposed of in any way under authority of this paragraph, and procured from funds heretofore appropriated, shall not exceed \$1,300,000,000. The value of such defense articles shall be determined by the head of the department or agency concerned or such other department, agency or officer as shall be designated in the manner provided in the rules and regulations issued hereunder. Defense articles procured from funds hereafter appropriated to any department or agency of the Government, other than from funds authorized to be appropriated under this Act, shall not be disposed of in any way under authority of this paragraph except to the extent hereafter authorized by the Congress in the Acts appropriating such funds or otherwise.

(3) To test, inspect, prove, repair, outfit, recondition, or otherwise to place in good working order, to the extent to which funds are made available therefor, or contracts are authorized from time to time by the Congress, or both, any defense article for any such government, or to procure any or all such services by private contract.

(4) To communicate to any such government any defense information, pertaining to any defense article furnished to such government under paragraph (2) of this subsection.

(5) To release for export any defense article disposed of in any way under this subsection to any such government.

(b) The terms and conditions upon which any such foreign government receives any aid authorized under subsection (a) shall be those which the President deems satisfactory, and the benefit to the United States may be payment or repayment in kind or property, or any other direct or indirect benefit which the President deems satisfactory.

(c) After June 30, 1943, or after the passage of a concurrent resolution by the two Houses before June 30, 1943, which declares that the powers conferred by or pursuant to subsection (a) are no longer necessary to promote the defense of the United States, neither the President nor the head of any department or agency shall exercise any of the powers conferred by or pursuant to subsection (a); except that until July 1, 1946, any of such powers may be exercised to the extent necessary to carry out a contract or agreement with such a foreign government made before July 1, 1943, or before the passage of such concurrent resolution, whichever is the earlier.

(d) Nothing in this Act shall be construed to authorize or to permit the authorization of convoying vessels by naval vessels of the United States.

(e) Nothing in this Act shall be construed to authorize or to permit the authorization of the entry of any American vessel into a combat area in violation of section 3 of the Neutrality Act of 1939.

* * * * *

SEC. 8. The Secretaries of War and of the Navy are hereby authorized to purchase

or otherwise acquire arms, ammunition, and implements of war produced within the jurisdiction of any country to which section 3 is applicable, whenever the President deems such purchase or acquisition to be necessary in the interests of the defense of the United States.

SEC. 9. The President may, from time to time, promulgate such rules and regulations as may be necessary and proper to carry out any of the provisions of this Act; and he may exercise any power or authority conferred on him by this Act through such department, agency, or officer as he shall direct.

SEC. 10. Nothing in this Act shall be construed to change existing law relating to the use of the land and naval forces of the United States, except insofar as such use relates to the manufacture, procurement, and repair of defense articles, the communication of information and other non-combatant purposes enumerated in this Act.